IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5522 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMED AAMIN @ CHOTELI RAHIMMIYA SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS SN QURESHI WITH MR MM TIRMIZI for Petitioner No. 1

MS MITA PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 01.4.2003 passed by the Police Commissioner, Ahmedabad City, against him, in exercise of powers under Section 3(1) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 01.4.2003.

2. The grounds of detention served upon the petitioner and placed on record reveals that the detaining authority placed reliance on two aspects, firstly, upon registration of offence two in number against the petitioner under Sections 66(1)(b), 65(a)(3), 81 and 116 (b) of the Bombay Prohibition Act on 16.12.2002 and on 3.01.2003. The detaining authority also relied upon the statements of informant witnesses recorded by the proposing authority on 21.3.2003 and verified by the detaining authority on 28.3.2003. The identity of these witnesses are concealed under Section 9(2) of the PASA Act. The witnesses have narrated the incident occurred on 16.2.2003 and 7.3.2003 wherein it is alleged in respect of 16.2.2003 incident that the petitioner approached the witness and on suspicion that the witness was offering information in respect of the petitioner, the witness was beaten by the petitioner. Though the crowd was gathered but the petitioner and his accomplice with the weapons like knife threatened the crowd and due to fear the crowd was dispersed and the public order was affected. Like wise, on 7.3.2003, when witness at about 13.00 hours with his vehicle waiting at Dhariapur, the petitioner approached him and forced him to give the vehicle of the witness to the petitioner for transportation of illegal liquor. On refusal, the witness was beaten and like earlier incident, on gathering of the crowd, the petitioner and his accomplice threatened the crowd. After taking this fact into consideration, the detaining authority after declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, passed the impugned order.

3. Learned Advocate Ms.S.N.Qureshi with learned Advocate Mr. M.M. Tirmizi for the petitioner and learned AGP Ms.Mita Panchal for the respondents were heard at length. Learned AGP placed on record an affidavit-in-reply of the detaining authority which is taken on record and has been taken into consideration.

4. Various contentions raised on behalf of the petitioner and controverted by the AGP. From the contentions raised and from the record available, it appears that the petition can be disposed of on the only

ground of non-application of mind towards the vital aspect of the matter by the detaining authority and other grounds raised are not required to be dealt with. On going through the grounds as placed on record, it transpires that the detaining authority was aware of the fact that the petitioner was under judicial custody when the order of detention came to be passed and served upon the petitioner. In this respect, the detaining authority came to the conclusion that though the petitioner was in judicial custody, the petitioner was likely to move an application for bail before the court and was likely to be released on bail. The detaining authority came to the conclusion that after releasing on bail, the petitioner was likely to continue his bootlegging activities. In this respect, learned AGP on behalf of respondents relied upon two decisions of the Apex Court in the matter of MEENA JAYENDRA THAKUR vs. UNION OF INDIA AND OTHERS, reported in (1999) 8 SCC 177 and n the matter of AHAMED NASSAR vs. STATE OF TAMIL NADU, reported in (1999) 8 SCC 473. It was the contention on behalf of the respondents that even when the petitioner is in judicial custody, and when the detaining authority has applied its mind to the fact that the detenu was likely to be released on bail, the order passed, could not be said to be without application of mind. Considering the contentions raised on behalf of the respondents in respect of the present case, it clearly appears that the facts of the case on hand is different from the facts of the case of the above referred decisions of the Apex Court. The question in this case is whether there was any material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail. The facts of this case, therefore, covered by a decision of the Apex Court in the matter of AMRUTLAL vs. UNION OF INDIA, reported in AIR 2000 SC 3675, wherein the Supreme Court ruled that to arrive at a subjective satisfaction that the petitioner was likely to be released on bail, there must be some cogent material before the detaining authority. Now going through the record of this case, it clearly appears that there is no material at all from which the detaining authority could come to the conclusion that the petitioner was likely to be released on bail and, therefore this is the case wherein the subjective satisfaction of the detaining authority is based on no material. Consequently, the order passed by the detaining authority cannot be sustained under Article 226 of the Constitution of India because of non-application of mind by the detaining authority to the vital and important aspect of the matter. The order impugned therefore deserves to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 01.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair